

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
August 3, 2009 Session

RONALD SWAFFORD v. DAVID AND SANDY WARD

Direct Appeal from the Chancery Court for Bledsoe County
No. 2969 Hon. Jeffrey F. Stewart, Chancellor

No. E2008-01014-COA-R3-CV - FILED AUGUST 27, 2009

When defendants obstructed plaintiffs' and abutting owners' use of alleyway, plaintiffs filed for declaratory judgment that the alley was a city street and they were entitled to use the alleyway. After an evidentiary hearing, the Trial Judge ruled that the alley had in fact been a city street and the City had abandoned it, but plaintiffs, as abutting owners, could continue to use the alleyway for ingress and egress. Defendants have appealed. We affirm the Trial Court.

Tenn. R. App. P.3 Appeal as of Right; Judgment of the Chancery Court Affirmed.

HERSCHEL PICKENS FRANKS, P.J., delivered the opinion of the Court, in which CHARLES D. SUSANO, JR., J., and D. MICHAEL SWINEY, J., joined.

David Ward, Pikeville, Tennessee, *pro se*.

Jennifer Austin Mitchell, Dunlap, Tennessee, for appellee, Ronald Swafford.

OPINION

Plaintiffs, Ronald Swafford and the City of Pikeville, filed a Petition against defendants, alleging that the City owned an alley way which ran along one side of the defendants' property, and that the alley way provided access to plaintiffs' property. Plaintiffs alleged the defendants had taken actions to claim possession of the alley, and asked the Court to declare the City was the owner of the alley and that it should be open to allow access. The City filed a Notice of Voluntary Dismissal without Prejudice, and defendants filed an Answer and Counter Complaint, denying the allegations of the petition.

Plaintiff then filed a Motion to Add Indispensable Party, seeking to add the City as a defendant. Defendants then filed an Amended Answer, asserting the plaintiff's claim was barred by the statute of limitations. The City then filed an Answer, admitting that the alleyway was a city street known as Spring Street.

An evidentiary hearing was held on August 6, 2007. At the conclusion of the evidentiary hearing, the Trial Court made a detailed ruling and found that regarding the chain of title to the Lynne Swafford property, all the deeds described the southern boundary as Spring Street. The Court reiterated that both Ronnie and David Swafford testified that when they were younger, the disputed area was graveled, and that people used it to access a town spring, and their aunt and uncle used it to access a trailer where they lived. The Court found that when the Porters conveyed their property to the Wards, the deed made no reference to Spring Street, but that the deed to the Porters was from Ms. Porter's aunt, Juanita Montgomery, and that she received her deed from Mrs. Boyd, and that deed listed the northern boundary as Spring Street, as did her predecessor's deed.

The Court found that the Wards were aware that this was an issue when they were considering buying the property, and that a disinterested witness, Betty Troglin, testified that she once lived in the Wards' home when she was a teenager, and the disputed area was graveled and was used by the public when something was going on in town. The Court further found that the road had not been graveled for some period of time and was grown up with grass.

The Court found, however, that the Swaffords continued to use the roadway to access their building and that there were drain pipes and utility pipes on the roadway belonging to the City. The Court concluded that the disputed area was a public road, and there was no dispute as to its location. The Court found the City had abandoned the road, but that the Swaffords as an abutting landowner would continue to have the use of its right of way.

The Wards filed notice of an appeal.

The issue on appeal is whether the Court erred in holding that the property in question was a city street and had been abandoned, and that the Swaffords were an abutting landowner who should still have access through the property?

Ward¹ argues that the Trial Court erred in its findings. The Court reviews the Trial Court's findings of fact *de novo* with a presumption of correctness, unless the preponderance of the evidence is otherwise. Tenn. R. App. P. 13(d).

In this case, the Court found that the disputed area was clearly part of a city street, and the evidence does not preponderate against that finding. The deeds in the chain of title for both plaintiff's and defendants' property, as well as the Lynne Swafford property, refer to Spring Street

¹ This Court ruled that Mrs. Ward would be dismissed from the appeal, since Mr. Ward filed as a *pro se* litigant, and thus could not represent her interests.

as a boundary. The Wards and Porters inquired regarding the City's position on this disputed area, and the City asserted that it had the right to use it, for whatever purpose. The proof was undisputed that the City had various utilities through this property, and that the sinkhole that existed on the property had been repaired by the City sometime after 1996.

Both Swafford brothers testified that the area had been graveled and was utilized by the public for parking and for access to the surrounding properties, and that they themselves had used it to access their property at the rear of the Lynne Swafford property. The Mayor's testimony demonstrated that two city maps showed Spring Street as being where plaintiff claimed, and the references in the deeds supported this as well. The only countervailing evidence by the defendant was that there had been no recent use as a road and that the gravel was gone, but this does not counter the clear evidence that this was a city street, but merely shows that in recent years it was abandoned. However, this does not change the fact that plaintiff, as an abutting landowner, would have a private right of access over the old road, as the Trial Court found. *See Ty Farming Co., Inc., v. Belew*, 1996 WL 649173 (Tenn. Ct. App. Nov. 8, 1996); *Jackson v. Hutton*, 15 Tenn. App. 281 (1932).

The evidence does not preponderate against the Trial Court's finding that the disputed area was a city street which may have been abandoned. Plaintiff is undisputably an abutting owner, and as such, retains the right to access and use of the street for ingress and egress from his property.

We affirm the Judgment of the Trial Court and remand, with the cost of the appeal assessed to David and Sandy Ward.

HERSCHEL PICKENS FRANKS, P.J.